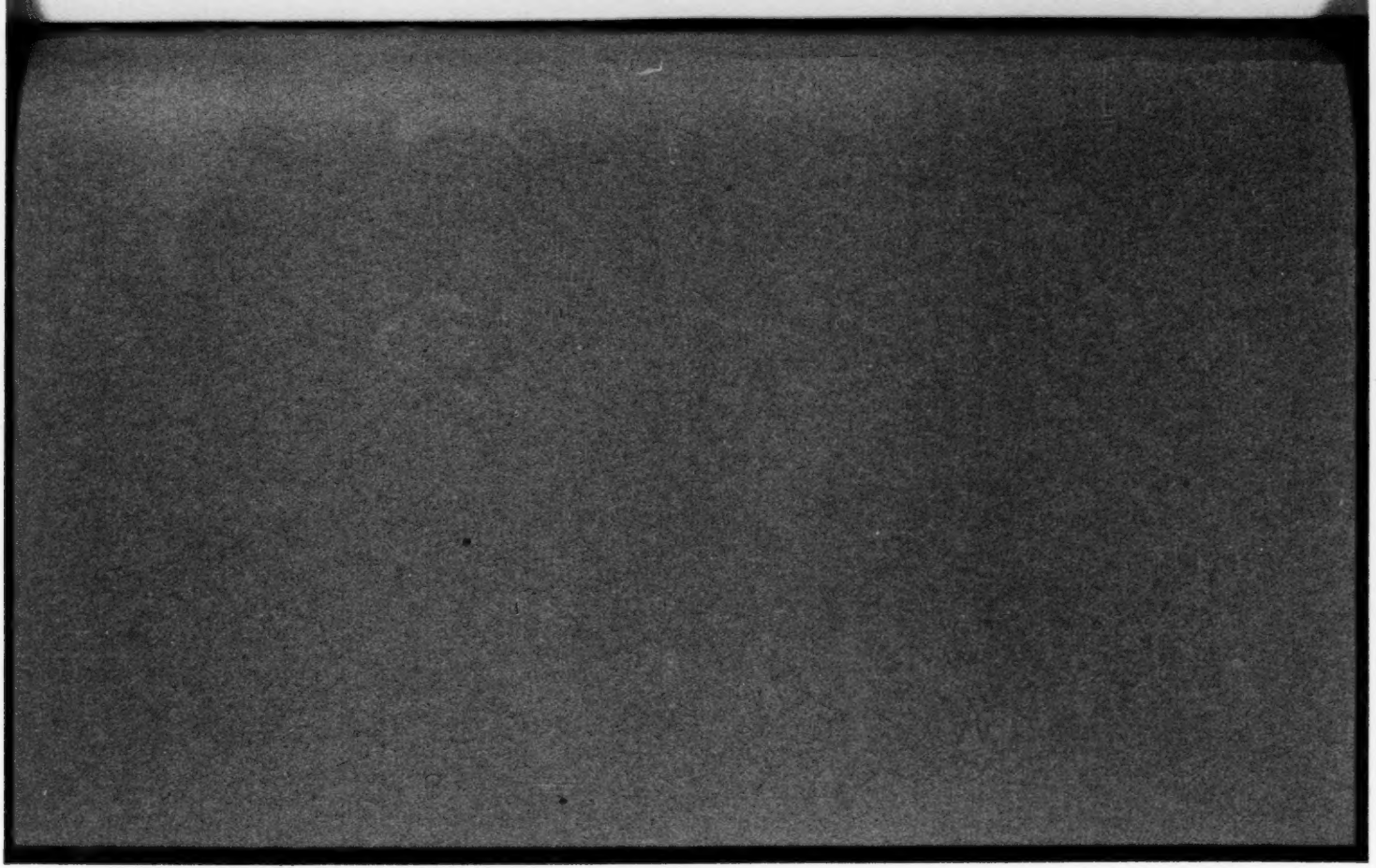

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 159

MANILA ELECTRIC COMPANY,
Petitioner,

vs.

A. L. YATCO, COLLECTOR OF INTERNAL REVENUE,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below.

The opinion (decision) of the Court of First Instance of Manila appears in full in the transcript of record (R. 30-41). The opinion (decision) of the Supreme Court of the Commonwealth of the Philippines, affirming the judgment of the trial court, also appears in full in the transcript of record (R. 49-59). Motion for reconsideration (R. 60-69) submitted by counsel for the petitioner (plaintiff below) was denied by the Supreme Court of the Philippines without opinion (R. 70).

Jurisdiction.

Final judgment was entered by the Supreme Court of the Philippines on December 23, 1939 (R. 70-71). Petition for writ of certiorari was filed June 17, 1940, together with a supporting brief and transcript of record. Petitioner seeks to invoke the jurisdiction of this Court

under section 7 of the act of February 13, 1925 (43 Stat. 936, 940, 28 U. S. C., sec. 349), and under section 7(6) of the Philippine Independence Law (act of March 24, 1934, 48 Stat. 456, 460, 462, 48 U. S. C., sec. 1237(6)), as supplemented by section 1(13) of the Ordinance appended to the Constitution of the Commonwealth of the Philippines.

Statutes Involved.

The pertinent provisions of the applicable statutes are set forth in the Appendix, p. 9.

Question Involved.

Whether the petitioner presents a sufficient basis for review by certiorari in contending that the decision of the Supreme Court of the Philippines, sustaining the validity of a tax imposed by the Commonwealth of the Philippines upon premiums paid by the petitioner on insurance policies placed with the City of New York Insurance Company and the United States Guaranty Insurance Company, foreign corporations, pursuant to section 192 of the Philippine Insurance Law, *infra,* is violative of the due process clause contained in Article III, Section 1(1) of the Philippine Constitution under decisions of this Court.

Statement.

Petitioner, a Philippine corporation engaged in business in the Philippines, seeks to recover 916.96 pesos paid under protest for taxes levied and assessed on premiums paid by the petitioner on certain insurance policies covering real and personal properties situated in the Philippines. The tax was assessed under section 192 of the Philippine Insurance Law (section 192 of Act No. 2427 (10 P. I. Public Laws 37), as amended by section 1 of Act No. 2430 (10 P. I. Public Laws 43), section

2 of Act No. 2648 (11 P. I. Public Laws 312), and section 4 of Act No. 3575 (25 P. I. Public Laws 33)), which provides for the payment of a tax of 1 percent of premiums paid for insurance obtained by owners of property directly with foreign companies.

The insurance contracts were entered into by the petitioner in New York City with the City of New York Insurance Company and the United States Guaranty Insurance Company, foreign corporations not licensed to do business in the Philippines. The contracts contain provisions which contemplate activities within the Philippines in connection with the ascertainment and adjustment of losses. The premiums on the insurance policies were paid in New York City.

Argument.

I

The sole issue in this case is whether the imposition of a tax based upon premiums paid by the petitioner on insurance policies placed with the City of New York Insurance Company and the United States Guaranty Insurance Company, foreign corporations, pursuant to the provisions of section 192 of the Philippine Insurance Law, *supra*, is a valid exercise of the taxing power of the Commonwealth.

In urging that the petition for a writ of certiorari should be granted, the petitioner contends that the decision of the Supreme Court of the Philippines is contrary to the decisions of this Court, particularly the decision in the case of *Compania General de Tabacos de Filipinas* v. *Collector of Internal Revenue*, 275 U. S. 87, in which the validity of taxes, assessed under the same provision of the Philippine Insurance Law as is here involved, was considered. It is submitted, however, that the decision of the Philippine Supreme Court not only is not in conflict with, but is supported by, the *Compania General* case.

In that case, this Court held that the Compania General, a Spanish corporation doing business in the Philippines, with its head office in Barcelona, Spain, could not be required to pay a tax of 1 percent of premiums paid pursuant to a contract of insurance covering marine risks on merchandise shipped from the Philippine Islands to Barcelona, inasmuch as the contract was entered into in Paris with a French corporation not licensed to do business in the Philippines and made provision for the payment of premiums and losses in Paris. But the Court also held in the same case that the tax was properly levied and collected with respect to premiums paid by the Compania General pursuant to a contract of insurance entered into in London with an English corporation, licensed to do business in the Philippines, and providing for the payment of premiums and losses in London, where it appeared that the policy covered risks on property within the Philippines which might require adjustment, and the activities of agents in the Philippine Islands in connection with the settlement of losses.

In the instant case, the Philippine Supreme Court held that the facts warranted the application of that part of the *Compania General* case which had reference to the tax upon premiums paid to the London company, and not that part which considered the tax upon premiums paid to the Paris company. Like the insurance contract with the London company, the petitioner's contracts with the New York insurers expressly contemplate that adjustment of losses and various related activities of the insurers should take place within the Philippines. The contracts provide that the "insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company" (R. pp. 27, 28); that, in case of disagreement "as to the amount of loss or damage, each shall * * * select a competent and disinterested

appraiser" (R. p. 28); that the "appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the State in which the property insured is located" (R. p. 28); that the insurer shall have the option "to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time * * *" (R. p. 29).

It is urged by the petitioner that the performance by the insurers of such activities in connection with the adjustment of losses is a mere possibility and is, therefore, not a proper basis for holding that the insurers subjected themselves to the jurisdiction of the Commonwealth. But in the *Compania General* case (*supra*, p. 98) this Court said that "the policy covers fire risks on property within the Philippine Islands which *may* require adjustment, and the activities of agents in the Philippine Islands with respect to settlement of losses arising thereunder." (Emphasis added.) And similarly, in the case of *Equitable Life Assurance Society* v. *Pennsylvania*, 238 U. S. 143, on the authority of which the portion of the *Compania General* case dealing with the London company contract was decided, the Court said (p. 147):

> "It is obvious that many incidents of the contract are *likely* to be attended to in Pennsylvania, such as payment of dividends when received in cash, sending an adjuster into the State in case of dispute, or making proof of death." (Emphasis added.)

It is abundantly clear, therefore, that the existence in the contract of provisions contemplating activity in the Philippines, is all that is required.

The petitioner seeks to distinguish the *Compania General* case on the ground that whereas the London company was actually licensed to do business in the Philippines, in the instant case "the insurance companies are not licensed

to engage in business in the Philippines and * * * have not sent any agents or representatives into the Philippines" (Petition, pp. 19, 20). A similar argument is also made by the petitioner with reference to the applicability of the *Equitable Society* case. Upon analysis of the second part of the *Compania General* case, however, it will be seen that the rationale and crux of the decision are that certain incidents of the contract were likely to be or might have been performed by the London company within the Philippines and not that the insurer was licensed to do business there. And the significant difference between the second part of the *Compania General* case and the first part of that case is not that the London company was licensed to do business in the Philippines whereas the Paris company was not, but that the contract with the London company covered fire risks on property within the Philippines which might have required certain adjustment activities there, whereas the contract with the Paris company insured the merchandise against maritime risks while en route from the Philippines to Europe and presumably would not have required such activities within the Philippines. That this is the correct interpretation of that decision is plainly indicated by the fact that the mere privilege or license to do business within a State does not subject a foreign corporation to a tax upon activities or transactions wholly performed and carried out without the State. *Connecticut General Life Insurance Co.* v. *Johnson*, 303 U. S. 77. Moreover, the foreign insurance companies in the instant case would be required to procure a license to do business within the Philippines in order to perform within that jurisdiction the contemplated activities in the course of the adjustment of losses (section 172 of the Philippine Insurance Law, Act No. 2427 (10 P. I. Public Laws 29); *Pennsylvania Lumbermen's Insurance Co.* v. *Meyer*, 197 U. S. 407; *Bothwell* v. *Buckbee Mears Co.*, 275 U. S. 274); and there would seem to be no valid distinction between the situation in the

Compania General case where the London company was licensed to do business in the Philippines at the time of the making of the insurance contract and the situation in the instant case where the foreign insurance companies would be required to qualify to do business in the Philippines as a condition to their right to perform the adjustment activities contemplated in their insurance policies.

The *Compania General* case and this case are, therefore, identical in their essential facts. This case presents no problem not considered by this Court in the former case and no solution not prescribed by this Court in the former case.

The petitioner also relies on the cases of *Allgeyer* v. *Louisiana,* 165 U. S. 578; *St. Louis Cotton Compress Co.* v. *Arkansas,* 260 U. S. 346; *Provident Savings Ass'n* v. *Kentucky,* 239 U. S. 103; *New York Life Insurance Co.* v. *Head,* 234 U. S. 149; *New York Life Insurance Co.* v. *Dodge,* 246 U. S. 357. All of these cases are clearly distinguishable and have no application here since in none of them does it appear that the contracts of insurance there involved required or contemplated the performance of any activities thereunder within the State seeking to exercise jurisdiction. Also all of these cases predate the *Compania General* case.

II

The tax under review in this case is one assessed directly against the insured.[1] It is submitted, therefore, that, quite apart from the question of whether the foreign insurers in the instant case may be said to contemplate doing business within the Philippines and thus to subject themselves to its taxing jurisdiction, the tax is

[1]A tax directly against insurance companies doing business in the Philippines is imposed under section 79 of Act No. 2339 (9 P. I. Public Laws 296, Appendix p. 10).

sustainable as one imposed upon the insured on the basis of premiums paid on a contract within the jurisdiction of the Commonwealth by reason of the fact that the insured and the property and risks covered are within the Philippines and certain activities in connection with the adjustment of losses are, under the contract, likely to be performed within the Philippines.

Conclusion.

For the foregoing reasons the respondent submits that the conclusion reached by the Supreme Court of the Philippines is correct and that, since the correctness of that conclusion is the only basis on which the petition is founded, the petition should be denied.

Respectfully submitted,

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July 27, 1940.